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EXAMINER

AVELLINO, JOSEPH E

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/712,017

Applicant(s)

PERRY ET AL.

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-14, 16-18, 21-26, 31-33, 35-41, 61, 68, 69 and 71-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-14, 16-18, 21-26, 31-33, 35-41, 61, 68, 69 and 71-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

1. Claims 5-14, 16-18, 21-26, 31-33, 35-41, 61, 68, 69, and 71-79 are pending in this examination. The Office acknowledges the cancellation of claims 1-4, 15, 19-20, 27-30, 34, 42-60, 62-67, 70, and 80-82.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 11, 2005 has been entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5, 7, 11-14, 16, 18, 21, 25, 26, 31, 33, 35-39, 41, 61, 68, 72-77, and 79 are rejected under 35 U.S.C. 102(b) as being anticipated by Romohr (USPN 5,596,723) (cited in Final Rejection dated February 10, 2005).

4. Referring to claim 5, Romohr discloses a method of providing automated assistance in configuring customer premises equipment for communication with another network element, comprising:

automatically identifying at least one of a valid virtual channel and a protocol valid for configuration with the customer premises equipment without prompting a user for information that directly or indirectly identifies the at least one of the valid virtual channel and the valid protocol (i.e. transmitting broadcast inquiries using various frame protocols across the network) (e.g. abstract);

assisting a user in configuring the customer premises equipment for use with the identified virtual channel and/or protocol (i.e. configures itself according to the most prevalent network operating system and frame type being used in the network) (e.g. abstract; Figure 4E);

communicating over a virtual channel and toward a destination network element (it is inherent that any communication from one entity must be sent to a destination entity, even if the sender is the destination entity) a probing configuration signal (e.g. abstract);

receiving over the virtual channel a response to the configuration signal (i.e. counts the network operating system specific responses for each of these supported frame types) (e.g. abstract; Figure 3C, ref. 340); and

identifying as valid for configuration the at least one of the valid virtual channel and the valid protocol associated with the response (i.e. configuring the equipment based on the most prevalent network OS and frame type) (e.g. abstract);

wherein communicating the probing configuration signal comprises communicating a plurality of probing configuration signals, each signal associated with a different of the at least one of the valid virtual channel and the valid protocol (Figure 3C, ref. 332-340).

5. Referring to claim 7, Romohr discloses a signal having a self configuring protocol (i.e. ARP) (Figure 3E, ref. 352-354).

6. Referring to claims 11 and 12, Romohr discloses communicating the probing configuration signal over a plurality of virtual channels likely to return a response (i.e. frame types used in the networks) (Figure 5-5A).

7. Referring to claim 13 and 14, Romohr discloses communicating the signal over a first virtual channel, and sending a second signal over a second and same virtual channel before a time out associated with the channel or signal expires (i.e. sending multiple inquiries using different frame types before the number of times has been expired) (Figure 3C, all).

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8. Referring to claims 16, and 18, Romohr discloses communicating the probing configuration signals approximately simultaneously (i.e. one right after another) (Figure 3E).

9. Referring to claims 21 and 25, Li discloses communicating a diagnostic signal (i.e. probing signal) toward a destination network (e.g. abstract); and

determining and reporting on the connectivity of a network layer (i.e. physical layer, which is considered a network layer according to the OSI standardized model of network implementation) based on whether a response to the diagnostic signal is received (if the connection is unsuccessful, an error message is displayed) (e.g. abstract).

10. Referring to claim 26, an inherent feature of any computer on a network is that it contains a modem.

11. Claims 31, 33, 35-39, 41, 61, 68, 72-74, are rejected for similar reasons as stated in the claims above.

12. Referring to claim 75, Romohr discloses displaying the valid virtual channel and protocol to a user, receiving the user's selection and configuring the customer premises equipment for operating using the selected channel and protocol (the computer automatically configures based on the prevalent network type, however the user can

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manually override this based on desired selection, therefore is able to receive a user selection) (e.g. abstract; Figures 4J-M).

13. Claims 76-77, and 79 are rejected for similar reasons as stated above.

Claim Rejections - 35 USC § 103

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6, 8-10, 22-24, 32, 69, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romohr.

15. Referring to claim 6, Romohr discloses the invention substantively as described in claim 5. Romohr does not specifically disclose the probing configuration signal comprises an F5 Operations, Administration, and Maintenance (OAM) loopback signal. However, it is well known and that the ATM networking standard includes various types of OAM cells that carry OAM related information that are used in administrative and supervisory actions and would provide a beneficial protocol to test for in the system of Romohr. Therefore it would have been obvious to include OAM signals to the system of Romohr to further provide more efficient transfer of network monitoring information and supervisory messages to network elements, resulting in enhanced failure detection.

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16. Referring to claim 8, Romohr discloses the invention substantively as described in claim 7, however does not specifically disclose the probing configuration signal includes a DHCP request, however it is well known in the art that computers utilize DHCP requests in a network to determine network connectivity and to determine which addressing modes are used in the network. By this rationale it would have been obvious to one of ordinary skill in the art to include DHCP in the protocol requests transmitted by Romohr in order to further simplify the system disclosed as well as to provide more efficient network component detection.

17. Referring to claim 9, Romohr discloses the invention substantively as described in claim 8. Romohr does not specifically disclose the protocol comprises an Internet over ATM protocol, however it is well known that the Internet over ATM protocol is widely used in networks for its reliability and ability to allow multiple networks to communicate with one another. Therefore would have been obvious to one of ordinary skill in the art to incorporate the Internet over ATM protocol to the system of Romohr to allow the internetworking of multiple LAN systems further enhancing data exchanging and message transfer.

18. Referring to claim 10, Romohr discloses the invention substantively as described in claim 8. Romohr does not specifically disclose the protocol comprises a Point to Point over ATM protocol or Point to Point over Ethernet protocol, however it is well known that both of these protocols are widely used in networks for its reliability and

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secure communications between computing systems. Therefore would have been obvious to one of ordinary skill in the art to incorporate these protocols to the system of Romohr to allow further robustness of the system and provide further enhanced customer service to those users who use those protocols.

19. Referring to claim 22, Romohr discloses the invention substantively as described in claim 21. Romohr does not specifically disclose the diagnostic signal comprises a PING signal operable to test an IP layer of the network, however it is well known that a PING signal is used widely to test and determine if a network element is connected (it is well known that hackers routinely ping random IP addresses to determine which IP addresses are in use by which addresses are able to return signals to the source computer). Therefore, it would have been obvious to one of ordinary skill in the art to incorporate a PING signal operable to test an IP layer of the network to determine if a network server is available to communicate with the interconnecting device of Romohr in order to determine which server to use in order to appropriately configure the customer premises equipment thereby providing more reliable connections and further enhancing customer service.

20. Referring to claim 23, Romohr discloses the invention substantively as described in claim 21. Romohr does not specifically disclose the diagnostic signal comprises a DNS signal operable to test a transmission layer of the network, however it is well known that a DNS signal is used widely to test and determine if the network element is

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connected and able to determine their appropriate location and to what network service they are connected (when a network client is connected to a network the first time, it is routine that the computer locate the DNS server in order to configure itself with the network for settings such as name server IP address resolution, etc.). Therefore, it would have been obvious to one of ordinary skill in the art to incorporate a DNS signal operable to test a transmission layer of the network to determine if a network server is available to communicate with the interconnecting device of Romohr in order to determine which server to use in order to appropriately configure the customer premises equipment thereby providing more reliable connections and further enhancing customer service.

21. Referring to claim 24, Romohr discloses the invention substantively as described in claim 21. Romohr does not specifically disclose the diagnostic signal comprises a HTTP request signal operable to test a application layer of the network, however it is well known that an HTTP signal is widely used to test and determine if the network element is connected and able to determine their connection capabilities under stress (numerous web server load testing systems will issue numerous HTTP GET requests in order to determine the capabilities of a particular server; furthermore it is widely known that Denial of Service attacks on servers by hackers use a flooding technique of HTTP requests in hopes to overload the server in order to produce a crash of the system). Therefore, it would have been obvious to one of ordinary skill in the art to incorporate an HTTP signal operable to test a application layer of the network to determine if a network

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server is available to communicate with the interconnecting device of Romohr in order to determine which server to use in order to appropriately configure the customer premises equipment thereby providing more reliable connections and further enhancing customer service.

22. Claims 32, 69, and 78 are rejected for similar reasons as stated above.

Claims 17, 40, and 71, are rejected under 35 U.S.C. 103(a) as being unpatentable over Romohr in view of Marullo et al. (USPN 6,185,701) (hereinafter Marullo).

23. Referring to claim 17, Romohr discloses the invention substantively as described in claim 16. Romohr further discloses communication a probing configuration signal over a plurality of virtual channels (see rejection for claims 11 and 12). Romohr does not disclose spawning a plurality of threads, and monitoring the probing configuration signal associated with each virtual channel using a separate thread. Marullo discloses spawning a plurality of threads (col. 21, lines 25-35), and monitoring the probing signal associated with each virtual channel (it is taken that each thread sets up its own virtual channel in order to communicate with the Internet) (col. 21, lines 24 to col. 22, line 17). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Marullo with Romohr to increase the functionality provide by the system while reducing the amount of human error allowed and the

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subsystem is fully automated and run without user intervention, thereby freeing up users for other activities as supported by Marullo (Col. 22, lines 1-17).

24. Claims 40, and 71 are rejected for similar reasons as stated above.

Response to Amendment

25. The Office withdraws its objection to claim 61 as being allowable as a new search and consideration of the prior art of record has provided a new rejection under Romohr (see above).

Response to Arguments

26. Applicant's arguments with respect to the claims above have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

27. Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

28. Applicant employs broad language, which includes the use of word, and phrases (i.e. the use of "virtual channel" which can be construed as a frame type, which only certain entitles can understand based on the format of the packet), which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly, define the claimed invention.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JEA
June 14, 2005


BUN JOB JAOENCHONWANI
PRIMARY EXAMINER
